

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition of Global NAPs South, Inc.)	
Pursuant to Section 252(e)(5) of the)	WC Docket No. 02-180
Communications Act for Expedited)	
Preemption of the Jurisdiction of the)	
Virginia State Corporation Commission)	
Regarding Interconnection Disputes)	
With Verizon – Virginia, Inc.)	

**COMMENTS OF VERIZON VIRGINIA INC. TO
GLOBAL NAPS SOUTH, INC.’S PETITION FOR EXPEDITED PREEMPTION**

Verizon Virginia Inc. (“Verizon”) respectfully submits these comments regarding the Petition for Preemption (“Petition”) filed by Global NAPs South, Inc. (“GNAPs”). In that Petition, GNAPs requests that the Commission preempt the jurisdiction of the Virginia State Corporation Commission (“Virginia Commission”) pursuant to section 252(e)(5) and immediately begin arbitrating an interconnection agreement between GNAPs and Verizon. GNAPs also urges the Commission to adopt a series of specific procedures that GNAPs contends should govern any arbitration.

First, GNAPs’ Petition fails to comply with Commission rules governing the filing of preemption petitions because it does not contain a “supporting affidavit.” Verizon requests that the Commission require GNAPs to cure its procedural deficiency and file a new petition that complies with the Commission’s rules. Second, Verizon also objects to GNAP’s proposed procedures, which deviate from, and in some instances even conflict with, rules and procedures the Commission has established in other Virginia arbitration proceedings. GNAPs’ request for multiple arbitrators, for example, conflicts with Commission rules and procedures that call for a

single arbitrator, ignores the Commission's standard practice in the Virginia arbitrations (which have been conducted by a sole arbitrator from the Wireline Competition Bureau), and will make administration of an arbitration unnecessarily complex and difficult.

ARGUMENT

As an initial matter, section 51.803(a)(1) of the Commission's rules requires that a petition for preemption be "supported by an affidavit" that states with specificity the basis for the petition.¹ GNAPs' Petition fails to include such a supporting affidavit and thus fails to comply with section 51.803. Accordingly, the Commission should not grant GNAPs' petition and should require GNAPs to file a new petition that complies with the Commission's rules.

1. More fundamentally, GNAPs' proposed procedures for any eventual arbitration are flawed. There is no basis, for example, for GNAPs' call for a three-member panel made up of one staff member each from the Common Carrier Bureau, the Office of Engineering and Technology, and the Office of Plans and Policy.² An arbitration before a "panel" conflicts with the Commission's rules and procedures, which consistently refer to a single arbitrator, not to a panel of any sort.³

¹ 47 U.S.C. § 51.803(a)(1).

² GNAPs Petition at 9-10. Although the Common Carrier Bureau has been renamed the Wireline Competition Bureau, GNAPs' Petition repeatedly refers to the Common Carrier Bureau. We assume that these erroneous references were inadvertent and read them as references to the Wireline Competition Bureau.

³ 47 C.F.R. § 51.807; *Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, Order, 16 FCC Rcd 6231 at ¶ 8 (2001) ("January 19, 2001 Order"). The January 19, 2001 Order states that the Chief of the Common Carrier Bureau (now the Wireline Competition Bureau) shall serve as the arbitrator in section 252(e)(5) proceedings, "with the assistance of the staff of the Common Carrier and Enforcement Bureaus." *Id.*

The skill and experience necessary to support an arbitration is concentrated in the Wireline Competition Bureau, which has presided over similar proceedings from Virginia and is intimately familiar with the reciprocal compensation issues any arbitration will address. For example, in the recent arbitration involving Verizon, Cox, WorldCom, and AT&T, the Commission appointed a single arbitrator, the Chief of the Wireline Competition Bureau, not a panel. And, the Commission chose to proceed with a single arbitrator despite the fact that Cox, WorldCom, and AT&T specifically requested a panel of at least three arbitrators in their prefiling memorandum.⁴ There is no reason why the Commission should look beyond the nucleus of experience and expertise in the Wireline Competition Bureau and appoint two *additional* arbitrators from two different Commission offices to share responsibility for the arbitration. A sole arbitrator from the Wireline Competition Bureau is far better equipped to conduct the arbitration than the three-member panel GNAPs proposes.

Appointing three arbitrators rather than one will also invite a host of administrative and logistical problems. It is no secret that arbitrations conducted before three decision-makers are more difficult to administer than those before a sole arbitrator. A panel of three arbitrators, all with different schedules and different perspectives, will only make the arbitration more unwieldy and complex and delay the resolution of these proceedings.

There is simply no justification for GNAPs' plea for a panel of three arbitrators and its request should be rejected.

2. In addition, the Commission should also reject GNAP's other requests for specific procedures and timeframes. Under the heading "General Format," GNAPs proposes that the Commission implement "final offer" arbitration, direct the arbitrator to require "specific contract

⁴ See Prefiling Memorandum of WorldCom, Inc., Cox Virginia Telecom, Inc. and AT&T Communications of Virginia, Inc., CC Docket No. 00-251, at 4 & n.1 (March 13, 2001).

language” from the parties, and permit the parties to file exceptions to the arbitrator’s decision.⁵ Under the heading “Time Limits,” GNAPs suggests that the Commission “step into the shoes” of the Virginia Commission and complete the arbitration within the time limits mandated for state commissions.⁶

There is no need to adopt such narrow procedural rules. The Commission has already issued an Order setting forth the procedures that govern arbitration of an interconnection agreement.⁷ GNAPs’ specific procedures not only deviate from that Order, in some instances they actually *conflict* with these established procedures. For example, GNAPs requests that (i) the parties be given the opportunity to file exceptions to the arbitrator’s decision, (ii) a conformed agreement will not be filed until after the Commission rules on the arbitrator’s decision, and (iii) the Commission, not the arbitrator, will pass judgment on any conformed agreement. This procedure clashes with the Commission’s January 19, 2001 Order, in which the Commission specifically addressed this portion of the arbitration proceeding:

8. . . .The arbitrator shall conduct [the arbitration] proceedings as he or she deems necessary and appropriate, issue the arbitration award, direct parties to submit an interconnection agreement conforming to the arbitration award, and issue an order approving or rejecting the agreement.

9. The [arbitrator]’s decisions issuing the arbitration award and approving or rejecting the agreement will be effective and binding upon release. Parties may file applications for review of both staff-level decisions.⁸

GNAPs’ request for Commission review of these “exceptions” conflicts with this procedure and should be rejected.

⁵ GNAPs Petition at 6, 7.

⁶ GNAPs Petition at 8.

⁷ January 19, 2001 Order.

⁸ *Id.* (internal parentheticals and citations omitted).

In fact, there is no reason the Commission should adopt *any* of GNAPs' proposed procedures. The arbitrator and the Commission may determine appropriate procedural rules during the arbitration, when and if an arbitration takes place. There is no need to do so now.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathleen M. Grillo". The signature is fluid and cursive, with a horizontal line drawn across the middle of the name.

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